

Article 2.6 Sellers of Travel

CALIFORNIA BUSINESS & PROFESSIONS CODE

SECTION 17550-17550.59 (2001)

§ 17550.	Legislative findings and declarations
§ 17550.1.	"Seller of travel"
§ 17550.2.	"Advertise"
§ 17550.3.	"Passenger"
§ 17550.4.	"Air carrier"
§ 17550.5.	"Ticket or voucher"
§ 17550.6.	"Officially appointed agent"
§ 17550.7.	"Participant in the Travel Consumer Restitution Fund"
§ 17550.8.	"Provider"
§ 17550.9.	"Travel services"
§ 17550.10.	"Travel certificate"
§ 17550.11.	"Adequate bond"
§ 17550.12.	[Section repealed 1998.]
§ 17550.13.	Required information to be given
§ 17550.14.	Failure to provide transportation
§ 17550.15.	Deposit of payments in trust account
§ 17550.16.	Exemption from trust account
§ 17550.17.	Issuance and delivery of ticket
§ 17550.18.	Severability of provisions
§ 17550.19.	Penalties
§ 17550.20.	Registration requirement
§ 17550.21.	Information to be filed
§ 17550.22.	Incomplete or false information
§ 17550.23.	Certification of restitution
§ 17550.24.	Issuance of registration
§ 17550.25.	Compliance with restitution fund
§ 17550.30.	Creation of Travel Seller Fund
§ 17550.32.	[Section repealed 1998.]
§ 17550.33.	[Section repealed 1998.]
§ 17550.34.	Repeal of article
§ 17550.35.	"Restitution corporation"
§ 17550.36.	"Participant"
§ 17550.37.	"Person aggrieved"
§ 17550.38.	Purpose of restitution corporation
§ 17550.39.	Nonprofit status of corporation; Liability of state for acts of officers or employees
§ 17550.40.	Compliance with provisions and rules
§ 17550.41.	Composition of board
§ 17550.42.	Commencement of fiscal year
§ 17550.43.	Establishment of funds; Initial assessment
§ 17550.44.	Annual assessment
§ 17550.45.	Failure to pay assessment
§ 17550.46.	Approval of claim form
§ 17550.47.	Filing of claim; Decision; Reconsideration; Appeal
§ 17550.48.	Assignment of right of recovery
§ 17550.49.	Revocation of registration
§ 17550.50.	Immunity of officers and employees
§ 17550.51.	Corporation not liable for damages
§ 17550.52.	Failure or cessation of corporation
§ 17550.53.	Authority to investigate claims; Examination of books and records
§ 17550.54.	Approval of articles of incorporation, bylaws or amendments
§ 17550.55.	Inapplicability of Insurance Code
§ 17550.56.	Examination and review by Attorney General
§ 17550.57.	Dissolution of corporation
§ 17550.58.	Administrative costs and expenses
§ 17550.59.	Repeal of article

17550. Legislative findings and declaration.

The Legislature finds and declares that certain advertising, sales, and business practices of sellers of travel have worked financial hardship upon the people of this state; that the travel business has a significant impact upon the economy and well-being of this state and its people; that problems have arisen that are peculiar to sellers of travel business; and that the public welfare requires regulation of sellers of travel in order to eliminate unfair advertising, sales, and business practices; to establish standards that will safeguard the people against financial hardship; to encourage competition, fair dealing, and prosperity in the travel business; and to provide certain and reliable funding for the seller of travel registration program and enforcement by the office of the attorney General of this article.

It is the intent of the Legislature in enacting this article that the Department of Justice, to the extent that resources are available, work together with representatives of the affected business community to develop sample forms that will, to the maximum extent possible, enable sellers of travel to comply with the requirement to provide to persons making payment the information required by subdivision (c) and subdivisions (e) to (l), inclusive, of Section 17550.13, in a manner that is simplified, efficient, and non-duplicative, and in a manner that recognizes the particular burdens and situations that may exist for small sellers of travel in their efforts to comply with the provisions of that section.

17550.1. "Seller of travel"

"Seller of travel" means a person who sells, provides, furnishes, contracts for, arranges, or advertises that he or she can or may arrange, or has arranged, wholesale or retail air or sea transportation either separately or in conjunction with other travel services. Seller of travel does not include: (a) an air carrier, (b) an ocean carrier, (c) a hotel, motel, or similar lodging establishment where in the course of selling, providing, furnishing, contracting for, or arranging transient lodging accommodations and related services for its registered guests, it (1) also arranges for transportation, and (2) does not directly or indirectly receive any money or other valuable consideration for arranging or providing that transportation, or (d) any person or organization certified under part 5 (commencing with Section 12140) of Division 2 of the Insurance Code, except such a person or organization shall comply with the registration and fee provisions of Sections 17550.20 and 17550.21 for each location at which air or sea transportation is sold either separately or in conjunction with other travel services.

17550.2. "Advertise"

"Advertise" means to make any representation in the solicitation of air or sea transportation, and includes communication with other members of the same partnership, corporation, joint venture, association, organization, group, or other entity.

17550.3. "Passenger"

"Passenger" is a person on whose behalf money or other consideration has been given or is to be given to another, including another member of the same partnership, corporation, joint venture, association, organization, group, or other entity, for air or sea transportation, other travel services, or both, for that person.

17550.4. "Air carrier"

An air carrier is a transporter by air of persons that operates under a certificate of convenience and necessity issued by the United States Department of Transportation.

17550.5. "Ticket or voucher"

"Ticket or voucher" means a writing that is itself good and sufficient to obtain the entire air or ocean transportation, or travel services, which the passenger has purchased.

17550.6. "Officially appointed agent"

"Officially appointed agent" means an agent expressly appointed as such, without reservation, for a specified time period, in a written instrument executed by the principal or an authorized representative of the principal. The written instrument shall identify the current name, address, and telephone numbers of the principal and agent.

17550.7. "Participant in the Travel Consumer Restitution Fund"

"Participant in the Travel Consumer Restitution Fund" is a registered seller of travel with its principal place of business in California, who does business with persons located in California, or is a registered seller of travel that does business in California, from one or more locations in California, and that meets the requirements of paragraph (16) of subdivision (e) of Section 17511.1.

17550.8. "Provider"

"Provider" means the person or entity who actually provides any transportation or travel services.

17550.9. "Travel services"

"Travel services" includes, but is not limited to, lodging, surface transportation, transfers, tours, meals, guides, baggage transfer, sightseeing, recreational activities, vehicle rental, or other travel-related services, however denominated, including, but not limited to, travel certificates, registration fees, and processing fees. "Travel services" does not include travel services rendered by providers of lodging such as a hotel, motel, or similar lodging establishment where the provider of lodging supplies only that service.

17550.10. "Travel certificate"

"Travel certificate" means a writing that represents the holder is entitled to air or sea transportation or travel services, to a discount or reduced price for that transportation or those travel services, or to purchase that transportation or those travel services from a specified source, whether or not the holder is required to pay additional money or fulfill any requirements in order to utilize the certificate.

17550.11. "Adequate bond"

(a) "Adequate bond" means a bond executed by an admitted surety insurer in an amount at all times no less than at least equal to the amount required to be held in a trust account pursuant to Section 17550.15 by any seller of travel in conjunction with such transportation, for the benefit of every passenger who sustains a monetary loss as a result of any violation of this article by a seller of travel or any failure by a seller of travel or by any official, agent, or employee of the seller of travel acting in the course or scope of his or her employment or agency. A seller of travel filing the bond shall maintain the bond in force in the proper amount as a condition of continuing to engage in business. The admitted surety insurer issuing the bond shall provide 30 days' written notice prior to cancellation or termination of the bond to the seller of travel filing the bond and the office of the Attorney General, Consumer Law Section. Cancellation of the bond shall not limit or exonerate the surety insurer from claims against the bond arising during the period it was in force.

(b) No passenger may recover upon the bond a sum greater than that which the passenger paid to the seller of travel, provided that this limitation shall not restrict a passenger from recovering sums greater than those paid to the seller of travel from sources other than the bond.

17550.13. Required information to be given

(a) A seller of travel shall not receive any money or other valuable consideration in payment for air or sea transportation or other travel services offered by the seller of travel unless at the time of or prior to the receipt of payment the seller of travel first furnishes to the person making that payment written materials conspicuously setting forth the following information:

- (1) The name and business address and telephone number of the seller of travel.
- (2) The total amount to be paid by or on behalf of the passenger, amount paid to date, the date of any future payment, the purpose of the payment made, and an itemized statement of the balance due, if any.
- (3) The name of the provider of the air or sea transportation, and the date, time, and place of each departure, or the circumstances under which the date, time, and place of departure will be determined.
- (4) All terms and conditions relating to the air or sea transportation or travel services being purchased by the passenger, including cancellation conditions. An air carrier's or an ocean carrier's standard contract of carriage is not required to be disclosed prior to the seller of travel receiving any money or other valuable consideration. There is no violation of this subdivision if both of the following occur:

(A) Compliance was rendered impossible as a direct result of an unforeseen condition beyond the control of the seller of travel.

(B) The seller of travel obtains from each passenger written acknowledgment that the passenger has not received disclosure of teeters and conditions required by this section.

(5) A clear and conspicuous statement that upon cancellation of the transportation or travel services, where the passenger is not at fault and has not canceled in violation of any terms and conditions previously clearly and conspicuously disclosed to and agreed to by the passenger, all sums paid to the seller of travel for services not provided will be promptly paid to the passenger, unless the passenger otherwise advises the seller of travel in writing, after cancellation.

(6) If the seller of travel is required by this article to have a trust account or bond, a clear and conspicuous disclosure stating: "California law requires certain sellers of travel to have a trust account or bond. This business has (a trust account) or (a bond issued by company) in the amount of (\$X)."

(7) If the seller of travel is a participant in the Travel Consumer Restitution Fund, a clear and conspicuous notice of the passenger's right to make a claim on that fund. The notice shall include a description of the losses covered, the method for making a claim, the time limit within which the claim shall be made, and the amount which may be claimed.

(8) If the seller of travel is a participant in a Consumer Protection Deposit Plan that meets the criteria set forth in subdivision (b) of Section 17550.16, a clear and conspicuous notice of the passenger's right to make a claim on the plan. That notice shall include a description of the losses covered, the method for making a claim, the time limit within which the claim shall be made, and the amount which may be claimed.

(9) If the seller of travel is a participant in a Consumer Protection Escrow Plan that meets the criteria set forth in subdivision (c) of Section 17550.16, a clear and conspicuous notice of the passenger's right to make a claim on the plan. That notice shall include a description of the losses covered, the method for making a claim, the time limit within which the claim shall be made, and the amount that may be claimed.

(10) If the seller of travel is not a participant, a clear and conspicuous disclosure that the seller of travel is not a participant in the Travel Consumer Restitution Fund. That disclosure shall be made both orally and in writing.

(11) If the seller of travel has its principal place of business in California and the passenger is located outside California, a clear and conspicuous disclosure that the transaction is not covered by the Travel Consumer Restitution Fund. That disclosure shall be made both orally and in writing.

(b) If a seller of travel offers, sells, provides, or distributes a travel certificate as defined in Section 17550.10 and any passenger payment is non refundable, in whole or in part, the seller of travel shall obtain the written acknowledgment of that limitation from the end user prior to, or at the time of, receipt of any money or other valuable consideration.

(c) Notwithstanding any other provision of this section, if money or other valuable consideration is received from a customer to whom the seller of travel has sold air or sea transportation within the preceding 12 months, the disclosures required by this section shall be made within five days of receipt of that money or other valuable consideration.

(d) Notwithstanding any other provision of this section, if money or other valuable consideration is received in payment for air transportation and

(1) the seller of travel is an officially appointed agent in good standing of the Airlines Reporting Corporation and

(2) the seller of travel forwards the amount paid, without offsetting or reducing the amount forwarded by any amounts due or claimed in connection with any other transaction, to the airline providing the transportation or to the Airlines Reporting Corporation, the disclosures required by this section with respect to that air transportation may be made orally.

17550.14. Failure to provide transportation

(a) The seller of travel has an obligation either to provide the air or sea transportation or travel services purchased by the passenger or to make a refund as provided by this section. The seller of travel shall return to the passenger all moneys paid for air or sea transportation or travel services not actually provided to the passenger, within either of the following periods, whichever is earlier:

(1) Thirty days from one of the following dates:

(A) The scheduled date of departure.

(B) The day the passenger requests a refund.

(C) The day of cancellation by the seller of travel.

(2) Three days from the day the seller of travel is first unable to provide the air or sea transportation or travel services. As used in this section, "unable to provide" includes, but is not limited to, any day on which the passenger's funds are not in the trust account required by Section 17550.15 and subdivision (g) of Section 17750.21 or the funds necessary to provide the passenger's transportation or travel services have been disbursed other than as allowed by Section 17550.15 or subdivision (a) of Section 17550.16. (b) If the seller of travel has disbursed the passenger's funds pursuant to paragraph (1), (2), (3), or (4) of subdivision (c) of Section 17550.15, the seller of travel may, instead of providing a refund, provide to the passenger a written statement accompanied by bank records establishing that the passenger's funds were disbursed as required by those provisions and, if disbursed to a seller of travel, proof of current registration of that seller of travel. A seller of travel who is exempt from the requirements of Section 17550.15 pursuant to subdivision (a) of Section 17550.16 and who is in compliance with subdivision (a) of Section 17550.16 may comply with this section by maintaining and providing to the passenger documentary proof of disbursement in compliance with subdivision (a) of Section 17550.16, and proof of current registration of the seller of travel to whom the funds were disbursed, which registration shall note that the registered seller of travel either has a trust account in compliance with Section 17550.15, or is exempt from the requirements of Section 17550.15 pursuant to subdivision (b) or (c) of Section 17550.16.

(c) If terms and conditions relating to a refund upon cancellation by the passenger have been disclosed and agreed to by the passenger and the passenger elects to cancel for any reason other than a seller of travel being unable to provide the air or sea transportation or travel services purchased, the making of a refund in accordance with those terms and conditions shall be deemed to constitute compliance with this section.

(d) Any material misrepresentation by the seller of travel shall be deemed to be a violation of this article and cancellation by the seller of travel, necessitating a refund as required by subdivision(a).

17550.15. Deposit of payments in trust account

(a) This section applies to a seller of travel as defined in Section 17550.1.

(b) The seller of travel shall deposit directly into a trust account in a federally insured bank, savings and loan association, or credit union 100 percent of all sums received from any person or entity, including, but not limited to, those payments made in cash, by credit card, or any other method of payment, for air or sea transportation for any person, or for any travel services offered by the seller of travel, and any refunds made by carriers or providers of travel services. This subdivision does not require that a seller of travel establish a separate trust account for each transaction.

(c) The seller of travel shall not in any manner encumber the corpus of the trust account and shall not withdraw money there from except as follows:

(1) In partial or full payment to the carrier for transportation, or to the provider of travel services, for the services or transportation purchased by the passenger.

(2) In partial or full payment to the carrier or provider of travel services if payment is made by wire transfer directly to an account of the Airlines Reporting Corporation, or by check or draft paid to the Airlines Reporting Corporation for the transportation or services contracted for by the passenger.

(3) Upon delivery of all tickets or vouchers necessary for the passenger to obtain from the carrier or provider of travel services

the transportation or services purchased by the passenger, at which time the seller of travel may withdraw the portion of the sum paid by the passenger that is due the seller of travel as compensation for sale of the transportation or travel services to that passenger. Tickets or vouchers shall be deemed delivered if personally delivered, turned over to an independent third-party delivery service for regular delivery to the passenger at the address designated by the passenger on the next business day, or deposited in the United States mail with first-class postage prepaid.

(4) Upon full payment to the provider of transportation or travel services, directly to the trust account identified in the registration of another seller of travel to whom the funds are paid, or to another registered seller of travel whose registration states that the other registered seller of travel is exempt pursuant to subdivision (b) or (c) of Section 17550.16 from the requirements of this section, of the total amount that is required by the carrier or provider of transportation or travel services or other registered seller of travel in order to provide the transportation or services purchased by the passenger, at which time the seller of travel may withdraw from the trust account that portion of the sum paid by the passenger which is commission due the seller of travel for sale of the transportation or travel services to that passenger.

(5) To make refunds to the passenger.

(d) Subdivision (c) shall not prevent payment of the interest earned on the trust account to the seller of travel.

(e) The seller of travel shall serve as trustee of the trust accounts required by this article. If an individual person is The seller of travel, the individual person shall be the trustee; if The seller of travel is a corporation, partnership, limited liability company, or other legal entity, a managing partner or partners, or the chief executive officer of the corporation, or executive officer or manager of a limited liability company shall be the trustee. The trustee may designate in writing that an officer or employee may manage the trust account if that officer or employee is under The trustee's supervision and control, and the original of that writings on file with the Attorney General's office.

(f) (1) Except as otherwise provided in this section, all trust accounts required by this article shall be maintained at a branch of a federally insured bank, savings and loan association, or credit union.

(2) The seller of travel shall file with the Attorney General an irrevocable agreement in writing allowing the Attorney General, a district attorney, or their representatives, upon written request, to examine and obtain copies of all business records, including, but not limited to, those related to the trust account wherever those records may be, and including, but not limited to, those records relating to any travel business account, or any account used for any travel business transaction, or account to which trust funds have been deposited. The statement shall indicate that the authorization remains in effect as long as the seller of travel, financial institution, or other custodian of records retains records.

(g) Every seller of travel has a fiduciary responsibility with respect to all sums received for transportation or travel services.

(h) The following are deemed to be held in trust for passengers:

(1) All sums received by the seller of travel for transportation or travel services whether or not required to be deposited in an actual trust account and regardless of whether any of these sums were required to be deposited or actually were deposited in a trust account.

(2) All property with which any of the sums described in paragraph(1) has been commingled if any of these sums cannot be identified because of the commingling.

(i) Upon any judicially ordered distribution of any money or property required to be held in trust and after all expenses of distribution approved by the court have been paid, every passenger has a claim on the trust for payments made for transportation and other travel services not provided. Unless a passenger can identify his or her funds in the trust within the time established by the court, each passenger shall receive a proportional share based on the amount paid.

(j) The seller of travel is not required to comply with the direct deposit requirement set forth in subdivision (b) if all of the following apply:

(1) The payment is made by credit card.

(2) The seller of travel does not deposit, negotiate, or factor the credit card charge or otherwise seek or obtain payment of the credit card charge or the crediting of the amount of the credit card charge to any account over which the seller of travel has any control.

(3) (A) If the charge includes transportation, the carrier that is to provide the transportation processes the credit card charge.

(B) If the charge is only for services, the provider of services processes the credit card charge.

(k) In lieu of the trust account required by this article, an adequate bond as set forth in Section 17550.11 may be maintained by the seller of travel. Prior to the advertisement of transportation or services, or both, by the seller of travel, the seller of travel shall file a copy of that bond with the Attorney General.

17550.16. Exemption from trust account

(a) A seller of travel is exempt from the requirements of subdivisions (a) to (f), inclusive, of Section 17550.15 for all transactions in which the seller of travel is in compliance with paragraphs (1) to (6), inclusive, or with paragraph (7).

(1) The seller of travel sells, provides, furnishes, contracts for, or arranges air or sea transportation in transactions with persons in California, only from locations in California, and the air or sea transportation or travel services are to be furnished by (A)a registered seller of travel that is in compliance with this article and Article 2.7 (commencing with Section 17550.35) or (B) an air or sea carrier.

(2) The seller of travel forwards the passenger's funds, without offsetting or reducing the amount forwarded by any amounts due or claimed in connection with any other transaction, to

(A) the provider of the transportation or travel services,

(B) the Airlines Reporting corporation,

(C) the trust account identified in the registration of the seller of travel to whom the funds are forwarded, or

(D) a registered seller of travel whose registration states that the registered seller is exempt pursuant to subdivision (b) or (c) from the requirements of Section 17550.15, and the seller of travel who forwards funds pursuant to subparagraph (C) or (D) obtains and keeps a copy of the registration referred to in subparagraph (C) or (D).

(3) The seller of travel is an officially appointed agent in good standing of the Airlines Reporting Corporation and the air transportation, if any, is sold to the passenger pursuant to that agency appointment.

(4) The seller of travel has been in business under the same ownership for a period of three years, unless acquired or formed by a registered seller of travel that has been in business under the same ownership for a period of three years. For the purposes of this paragraph, the following shall not constitute a change in ownership:

(A) Any structural change involving a change in the type of entity, such as from a corporation to a partnership, and not involving the addition of any new, underlying ownership interest.

(B) The deletion of any owner or ownership interest.

(5) The seller of travel sells, provides, furnishes, contracts for, or arranges air or sea transportation or travel services only at retail directly to the general public and not through any other seller of travel, all of which air or sea transportation and travel services are to be furnished by other, unrelated providers or sellers of travel.

(6) The seller of travel is in compliance with the requirements of Section 17550.20 and Article 2.7 (commencing with Section 17550.35). Any seller of travel seeking to qualify for this exemption shall provide all information necessary for the Attorney General or his or her delegate to determine that the seller of travel meets the criteria set forth in paragraphs (1) to (6), inclusive.

(7) A seller of travel in a transaction where the air or sea transportation or travel services are furnished by a business entity that

(A) is located and providing transportation or travel services outside of the United States and

(B) is not in compliance with the provisions of this article is exempt from the requirements of Section 17550.15 for that transaction if the seller of travel obtains each passenger's written acknowledgment of receiving, prior to making any payment, a clear, conspicuous, and complete written disclosure that the provider of transportation or travel services is not in compliance with the Seller of Travel Law and the transaction is not covered by the Travel Consumer Restitution Fund, and of the attendant risks and consequences thereof.

(8) If the Attorney General or his or her delegate finds, pursuant to Section 17550.52, that the Travel Consumer Restitution Corporation has failed or ceased to operate, a seller of travel who was a participant in the Travel Consumer Restitution Fund shall no longer be exempt from compliance with the requirements of Section 17550.15 and 17550.17. If Article 2.7 (commencing with Section 17550.35) ceases to operate for any reason, including, but not limited to, repeal pursuant to Section 17550.59, no seller of travel shall be exempt from compliance with the requirements of Sections 17550.15 and 17550.17 unless in compliance with subdivision (b) or (c).

(b) A seller of travel who is a participant, with respect to all sales of air or sea transportation and travel services, in a Consumer Protection Deposit Plan that meets the criteria of paragraphs (1) to (3), inclusive, and who complies with paragraph (4) need not comply with Section 17550.15.

(1) The plan is operated and administered by an entity who demonstrates to the satisfaction of the Attorney General or his or her delegate that the operating and administering entity is competent and reliable and that the plan will achieve fully the purposes and objectives of this article. Each approved plan shall include provisions requiring that each participating seller of travel

(A) has been engaged in business as a seller of travel in the United States under the same ownership for not less than three years, unless acquired or formed by a seller of travel already participating and in good standing in the plan, and

(B) has deposited with the administrator of the plan a minimum of one million dollars (\$1,000,000) in security in the form of a bond, letter of credit, or certificate of deposit, which security shall be (i) in favor solely of the plan, (ii) held by the plan pursuant to the terms of the plan, (iii) used solely to refund passenger payments or deposits or to complete tours, and (iv) payable solely in the event that

(I) The seller of travel fails to refund passenger payments or deposits due as a result of the bankruptcy, insolvency, or cessation of operations of the seller of travel or after the cancellation or material failure by the seller of travel to complete performance of the passenger's transportation or travel services or

(II) the seller of travel fails to replace the security with another meeting the criteria set forth in subparagraph (B) no later than 30 days prior to its expiration.

(2) Claims filed against the Consumer Protection Deposit Plan are decided within 45 days of receipt and paid within 30 days of decision.

(3) The Consumer Protection Deposit Plan has been reviewed and approved in writing by the Attorney General or his or her delegate as meeting the criteria set forth above, including a finding that the plan will effectuate the purposes of this article. Should the approved plan cease to provide the consumer protections set forth in paragraph (1), the Attorney General or his or her delegate shall revoke his or her approval immediately. Upon that revocation, The seller of travel shall no longer be exempt from compliance with the requirements of Sections 17550.15 and 17550.17.

(4) Any participant in a Consumer Protection Deposit Plan seeking to qualify for this exemption shall provide all information necessary for the Attorney General or his or her delegate to determine

(A) that the Consumer Protection Deposit Plan in which the seller of travel is a participant meets the criteria set forth in paragraphs (1), (2), and (3),

(B) that the seller of travel is a participant in full compliance with the terms and conditions of an approved consumer protection deposit plan, and

(C) provide a written agreement from the authorized representative of the Consumer Protection Deposit Plan in which the plan administrator agrees to give the office of the Attorney General, Consumer Law Section, immediate written and telephonic notice in the event of termination of the seller of travel's participation in the plan.

(c) A seller of travel who utilizes for all transactions a Consumer Protection Escrow Plan which meets the criteria of paragraphs (1) to (6), inclusive, and who complies with paragraph (7) is exempt from the requirements of Section 17550.15.

(1) The plan is operated and administered as escrow holder by a federally insured bank that demonstrates to the Attorney General or his or her delegate that the manner in which it will administer the plan will be consistent with the purposes of this article. Each approved escrow plan shall include provisions requiring that all air tickets sold by participants in the plan be issued through the Airlines Reporting Corporation.

(2) All funds delivered to the escrow holder, by cash, check, charge card, or otherwise, are held and disbursed by the escrow holder for the benefit of, and to protect the interests of, the passenger.

(3) All funds are separately accounted for by booking number and passenger name.

(4) Claims filed against the escrow plan are decided within 45 days of receipt and paid within 30 days of decision.

(5) All passenger funds are to be delivered to the escrow holder as required by Section 17550.15.

(6) The Consumer Protection Escrow Plan has been reviewed and approved in writing by the Attorney General or his or her delegate as meeting the criteria set forth herein, including a finding that the plan will effectuate the purposes and objectives of this article. Should the approved plan cease to provide the consumer protections set forth in paragraphs (1) to (5), inclusive, the Attorney General or his or her delegate shall revoke his or her approval of the plan immediately. Upon that revocation, the seller of travel shall no longer be exempt from compliance with the requirements of Sections 17550.15 and 17550.17.

(7) Any participant in a consumer protection plan seeking to qualify for this exemption shall provide all information necessary for the Attorney General or his or her delegate to

(A) determine that the Consumer Protection Escrow Plan in which the seller of travel is a participant meets the criteria set forth in paragraphs (1) to (6), inclusive,

(B) determine that the seller of travel is a participant in full compliance with the terms and conditions of an approved Consumer Protection Escrow Plan, and

(C) provide a written agreement from the authorized representative of the Consumer Protection Escrow Plan in which the plan administrator agrees to give the office of the Attorney General, Consumer Law Section, immediate written and telephonic notice in the event of termination of the seller of travel's participation in the plan.

17550.17. Issuance and delivery of tickets

(a) This section does not apply to sellers of travel who are exempt from the requirements of Section 17550.15 pursuant to Section 17550.16.

(b) Upon payment in full by the passenger for air or sea transportation and any related services with a credit card or with cash, the seller of travel shall issue and deliver the ticket or voucher to the passenger or his or her designated agent within 72 hours.

(c) Upon payment in full by the passenger for air or sea transportation and any related services with a check, the seller of travel shall issue and deliver the ticket or voucher to the passenger or his or her designated agent within 72 hours of the earlier of the following: (1) The time the passenger's payment is credited to the seller of travel's account. (2) The expiration of the maximum hold period specified in Section 10.190405 of Title 10 of the California Code of Regulations.

(d) Tickets, vouchers, or receipts shall be deemed to have been delivered if they have been turned over to an independent third-party delivery service or the United States Postal Service for regular delivery.

(e) Where the seller of travel is unable to issue tickets or vouchers upon payment as set forth in subdivisions (b) and (c), the seller of travel may comply with this section by either:

(1) forwarding to the air or sea carrier, or provider of travel services the portion of the sum paid by the passenger that is required by the air or sea carrier or provider of travel services from the seller of travel in order to provide the transportation or services purchased by that passenger; the seller of travel may not offset or reduce the amount forwarded by any amounts due or claimed in connection with any other transaction, or

(2) complying with Sections 17550.13, 17550.14, and 17550.15.

(f) There is no violation of this section if (1) compliance with this section was rendered impossible as a direct result of an unforeseen condition beyond the control of the seller of travel, and, (2) the seller of travel complied with this section or made restitution to the passenger within 30 days after the transportation or travel services purchased by the passenger were not provided.

(g) For purposes of this section, "72 hours" means three business days as defined in Section 9 of the Civil Code.

17550.18. Severability of provisions

(a) If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

(b) In a criminal action, a seller of travel has the burden of producing evidence to establish any exception to the provisions of this chapter; and in a civil action, a seller of travel has the burden of proof to establish any exception to the provisions of this chapter.

(c) Any action or proceeding to attack, review, set aside, void, change, or annul any decision, determination, or finding of the Attorney General or his or her delegate pursuant to Article 2.6 (commencing with Section 17550) or Article 2.7 (commencing with section 17550.35) shall be in accordance with the provisions of section 1094.5 of the Code of Civil Procedure. In such action or

proceeding, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion shall be found by the court only if the decision, determination, or finding was not supported by substantial evidence in light of the entire written record before the Attorney General or his or her delegate at the time the decision, determination, or finding was made. The record before the court shall be the same written record upon which the Attorney General or his or her delegate acted.

17550.19. Penalties

In addition to any civil penalties provided in this division, violation of this article is punishable as follows:

(a) As a misdemeanor by a fine of not more than ten thousand dollars (\$10,000), by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment for each violation.

(b) In addition, any violation of Section 17550.14 or subdivision(b) or (c) of Section 17550.15 where money or real or personal property received or obtained by a seller of travel for transportation or travel services from any and all persons aggregates one thousand dollars (\$1,000) or more in any consecutive 12-month period, or the payment or payments by or on behalf of any one passenger exceeds in the aggregate four hundred dollars (\$400) in any 12-month period, is punishable either as a misdemeanor or as a felony by imprisonment in the state prison for 16 months, or two or three years, by a fine of not more than twenty-five thousand dollars(\$25,000), or by both that fine and imprisonment for each violation.

(c) In addition, any intentional use for any purpose of a false seller of travel registration number, with intent to defraud, by an unregistered seller of travel is punishable as a misdemeanor or felony as provided in this section.

(d) Any violation of Section 17550.15 shall be a misdemeanor and shall be punished as provided in this section. Every act in violation of Section 17550.15 may be prosecuted as a separate and distinct violation and consecutive sentences may be imposed for each violation.

(e) Sellers of travel shall also comply with Sections 17537,17537.1, and 17537.2 of the Business and Professions Code and all other applicable laws. This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state that applies or may apply to any transaction.

17550.20. Registration requirement

(a) Not less than 10 days prior to doing business in this state, a seller of travel shall apply for registration with the office of the Attorney General by filing with the Consumer Law Section the information required by Section 17550.21 and a filing fee of one hundred dollars (\$100) for each location from which The seller of travel conducts business. A late fee of five dollars (\$5)per day, up to a maximum of five hundred dollars (\$500), shall be paid for each day after the time specified by this section until the filing fee and the information required by Section 17550.21 are received. No registration shall be issued or approved until the late fee has been paid. A seller of travel shall be deemed to do business in this state if the seller of travel solicits business from locations in this state or solicits prospective purchasers who are located in this state.

(b) Registration shall be valid for one year from the effective date thereof shown on the registration issued by the office of the Attorney General and may be annually renewed by making the filing required by Section 17550.21 and paying a filing fee of one hundred dollars (\$100) for each location from which the seller of travel conducts business. A late fee of five dollars (\$5) per day, up to a maximum of five hundred dollars (\$500), shall be paid for each day after the time specified by this section until the filing fee and the information required by Section 17550.21 are received. No registration shall be renewed until the late fee has been paid.

(c) Whenever, prior to expiration of a seller of travel's annual registration, there is a material change in the information required by Section 17550.21, the seller of travel shall, within 10 days, file an addendum updating the information with the Consumer Law Section of the office of the Attorney General.

(d) (1) Not less than 10 days prior to the transfer or sale of any interest in a seller of travel, the selling or transferring owner shall file with the office of the Attorney General, Seller of Travel Program, a notice of encumbrance, sale, or transfer of ownership, using a form provided for that purpose by the office of Attorney General. The notice shall provide the information required pursuant to subdivision (d) of Section 17550.21 as to each transferee.

(2) Until the time the notice of encumbrance, sale, or transfer of ownership required in paragraph (1) is filed as required, the selling, encumbering, or transferring owner is responsible for all acts of and obligations imposed by law on the transferee sellers of travel to the same extent as they would have been responsible had there been no transfer, sale, or encumbrance.

(e) The office of the Attorney General shall suspend the registration of any seller of travel who

(1) fails to make any payment required pursuant to Article 2.7 (commencing with Section17550.35) or

(2) submits a check in payment of a registration fee or late fee required by this section that is not honored by the institution on which it is drawn. The registration of the seller of travel shall be suspended until all such payments due have been collected.

(f) The Attorney General may, at his or her discretion and subject to supervision by the Attorney General or his or her delegate, contract out all or any part of the processing of registrations required by this section.

(g) This section does not apply to an individual, natural person who meets all of the following conditions:

(1) Has a written contract with a registered seller of travel to act on that registered seller of travel's behalf in offering or selling air or sea transportation and other travel goods or services in connection with the transportation.

(2) Acts only on behalf of a registered seller of travel with whom the person has a written contract in the offer or sale to a passenger of air or sea transportation and other goods or services in connection with the transportation and sells no other air or sea transportation or travel services to that passenger.

(3) Provides air or sea transportation or travel services that are offered or sold pursuant to the official agency appointment of the registered seller of travel with whom the person has a written contract.

- (4) Does not receive any consideration for air or sea transportation or other travel services from the passenger.
- (5) Requires the passenger to pay all consideration for air or sea transportation or other travel services directly to the air carrier or ocean carrier or to the registered seller of travel.
- (h) Whenever the Attorney General determines that a registration application is accurate and complete, the application shall be processed and a registration certificate shall be issued to The seller of travel within 21 days.

17550.21. Information to be filed

Each filing pursuant to Section 17550.20 shall contain the following information:

- (a) The name or names of the seller of travel, including the name under which the seller of travel is doing or intends to do business, if different from the name of the seller of travel and a copy of the current fictitious business statement filed with the responsible governmental entity, whenever a filing is required by law.
- (b) The seller of travel's business form and place of organization and, if operating under a fictitious business name, the location where the fictitious name has been registered.
- (c) The complete street address or addresses of all locations from which the seller of travel will be conducting business, including, but not limited to, locations at which telephone calls will be received from, or made to, passengers or other sellers of travel. The statement shall designate which location is the principal place of business.
- (d) The complete business and residential address, the business telephone number, the driver's license number and state of issuance or equivalent personal identification, and the date of birth of each owner and principal of the seller of travel. "Owner" means a person who owns or controls 10 percent or more of the equity of, or otherwise has claim to 10 percent or more of the net income of, a seller of travel. "Principal" means an owner, an officer of a corporation, a general partner of a partnership, or a sole proprietor of a sole proprietorship.
- (e) A statement as to whether the seller of travel, any owner, or principal, or any other seller of travel owned or managed by any owner or principal of the seller of travel, or the seller of travel itself has had entered against that person or entity any judgment, including a stipulated judgment, order, made a plea of nolo contendere, or been convicted of any criminal violation. The statement shall identify the person, the court or administrative agency rendering the judgment, order, or conviction, the docket number of the matter, and the date of the judgment, order, or conviction; where the judgment, order, or record of conviction is filed; and the nature of the case or judgment. This subdivision does not require disclosure of marital dissolution, child support, or child custody proceedings.
- (f) A copy of the travel certificates, if any, that are or will be sold, marketed, or distributed to any person or entity by the seller of travel.
- (g) The seller of travel shall file with the Attorney General a signed and dated statement indicating
 - (1) the account number of each trust account required by this article,
 - (2) the name and address of each financial institution at which the seller of travel maintains a trust account required by this article,
 - (3) any registration number issued to the seller of travel by the Airline Reporting Corporation or the International Association of Travel Agents Network, and
 - (4) a consent form consenting to the Attorney General, a district attorney, or their representatives obtaining directly from the Airlines Reporting Corporation, International Association of Travel Agents Network, a seller of transportation, provider of transportation, or provider of travel services any information related to an investigation of a seller of travel's compliance with this section. The consent form shall be provided by the Attorney General. If a bond is maintained in lieu of the trust account, a copy of that bond shall be filed with the Attorney General.
- (h) A statement signed by each owner and principal granting permission to the office of the Attorney General to obtain from any financial institution or credit union at which any trust account required by Section 17550.15 is maintained, information relating to that trust account, as set forth in paragraph (2) of subdivision (f) of Section 17550.15.
- (i) The information required by this section shall be verified by a declaration signed by each owner and principal of the seller of travel, or in the case of a registered seller of travel that does business in California, from one or more locations in California, and that meets the requirements of paragraph (16) of subdivision (e) of Section 17511.1, by a duly authorized officer of the corporation, under penalty of perjury pursuant to the laws of the State of California. The declaration shall specify the date and location of signing. Upon re-registration by a previously registered seller of travel, the information required by this section may be verified by the chief executive officer of a corporation, managing partner of a partnership, or manager of a limited liability company.

17550.22. Incomplete or false information

No registration application shall be accepted for filing if it is incomplete or contains false information.

17550.23. Certification of restitution

- (a) The Travel Consumer Restitution Corporation shall notify the office of the Attorney General whenever a seller of travel with its principal place of business in California, which does business with persons located in California, is in compliance with Article 2.7 (commencing with Section 17550.35).
- (b) A registration application for a seller of travel who does not or intends not to comply with the requirements of Section 17550.15 because the seller of travel claims to meet the requirements of subdivision (b) of Section 17550.16 shall be accompanied by evidence that the seller of travel is a participant in a Consumer Protection Deposit Plan that meets the criteria set forth in subdivision (b) of Section 17550.16.

(c) A registration application for a seller of travel who does not or intends not to comply with the requirements of Section 17550.15 because the seller of travel claims to meet the requirements of subdivision (c) of Section 17550.16 shall be accompanied by evidence that the seller of travel is a participant in a Consumer Protection Escrow Plan that meets the criteria set forth in subdivision (c) of Section 17550.16.

17550.24. Issuance of registration

(a) The Attorney General or his or her delegate shall issue a separate registration number to each registrant whose registration is accepted. That registration number shall be valid for the period specified in subdivision (b) of Section 17550.20, unless revoked or suspended by the Attorney General or his or her delegate. Grounds for suspension or revocation include material misrepresentation in a registration application, or a failure to amend a registration as provided in subdivision (c) of Section 17550.20.

(b) Any registration issued to a seller of travel who is required to comply with the provisions of Section 17550.15 shall set forth the number and location of the required trust account.

(c) Any registration issued to a seller of travel who has complied with the requirements of subdivision (b) of Section 17550.23 shall state that the seller of travel claims an exemption from the requirements of Section 17550.15 pursuant to subdivision (b) of Section 17550.16.

(d) Any registration issued to a seller of travel who has complied with the requirements of subdivision (c) of Section 17550.23 shall state that the seller of travel claims an exemption from the requirements of Section 17550.15 pursuant to subdivision (c) of Section 17550.16.

(e) A registered seller of travel shall display a copy of its current registration certificate in a manner and place easily accessible to the public, in each location in which the seller of travel conducts its business, and shall provide a copy of its current registration upon request to any other registered seller of travel from whom it receives passenger funds in payment for transportation or travel services.

(f) The registration number of the seller of travel shall be clearly and conspicuously displayed on all advertising materials offering for sale or soliciting the purchase of any air or sea transportation or travel services, including, but not limited to, any writings, or promotional materials of any kind which are advertised, displayed, or disseminated in any manner to any persons in California, or from California to any person elsewhere. A registered seller of travel that does business in California from one or more locations in California and that meets the requirements of paragraph (16) of subdivision (e) of Section 17511.1 shall display its registration number only on advertising materials that are produced or placed by its business locations within California or that make reference to specific business locations offering air or sea transportation or travel services. Wherever seller of travel, registered seller of travel, or similar terms are used in any advertising materials, they shall be accompanied by a statement which discloses, at least as prominently, that "registration as a seller of travel does not constitute approval by the State of California."

17550.25. Compliance with restitution fund

(a) All sellers of travel who are participants shall comply with Article 2.7 (commencing with Section 17550.35) prior to engaging in those sales.

(b) Any seller of travel that is not a participant who is doing business with persons located in California shall make a clear and conspicuous disclosure, both orally and in writing, that the seller of travel is not a participant in the Travel Consumer Restitution Fund. Any seller of travel doing business from any location in California with persons located outside California shall make a clear and conspicuous disclosure, both orally and in writing, that the transaction is not covered by the Travel Consumer Restitution Fund. Any seller of travel required by the provisions of this article to have a trust account or bond shall make a clear and conspicuous disclosure of the existence of the trust account or of the issuer and amount of the bond.

17550.30. Creation of Travel Seller Fund

(a) The Travel Seller Fund is hereby created in the State Treasury. All fines and fees, including late fees, collected pursuant to this article shall be deposited in the fund, and the money in the fund may be expended only for the purposes specified in this article.

(b) All money paid into the State Treasury and credited to the Travel Seller Fund shall be used by the Department of Justice in carrying out and enforcing the provisions of this article, including, but not limited to, the payment of salaries of Department of Justice personnel, contractors, or consultants.

(c) The sum of three hundred ninety-five thousand dollars (\$395,000) is hereby appropriated from the Travel Seller Fund to the Department of Justice for purposes of the Sellers of Travel Program established pursuant to Article 2.6 (commencing with Section 17550).

17550.34. Repeal of article

This article shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2006, deletes or extends that date.

17550.35. "Restitution corporation"

"Restitution corporation" means the Travel Consumer Restitution Corporation.

17550.36. "Participant"

"Participant," as used in this article, means a seller of travel, as defined in Section 17550.7, who is registered pursuant to Section 17550.20.

17550.37. "Person aggrieved"

(a) "Person aggrieved," as used in this article, means a passenger, as defined in Section 17550.3, located in California at the time of sale, who has sustained a loss as a result of the failure of a seller of travel to refund passenger payments made as payment for air or sea transportation or travel services, where a refund is due as a result of the bankruptcy, insolvency, cessation of operations, or material failure to provide the transportation or travel services purchased by the passenger. "Loss," as used herein, shall be limited to losses that are incurred in a transaction with a seller of travel who, at the time of sale, was a paid-up participant in the Travel Consumer Restitution Fund and was registered pursuant to Section 17550.20. "Person aggrieved" shall not mean or include a passenger in a transaction where the air or sea transportation or travel services are furnished by a business entity that (a) is located and providing transportation or travel services outside of the United States and (b) is not in compliance with Article 2.6 (commencing with Section 17550).

(b) Any person aggrieved who files a claim for payment from the Travel Consumer Restitution Fund thereby waives his or her right to bring any action at law or equity that

(1) is against the seller of travel as to whom the claim is made and

(2) arises from the transaction that is the subject of the claim against the restitution fund. The claim form required by Section 17550.46 shall include a clear and conspicuous notice of the waiver.

(c) The waiver of rights provided for by subdivision (b) shall not apply to any claimant whose claim is denied on any of the following grounds, as set forth in the statement of decision required by subdivision (d) of Section 17550.47:

(1) The seller of travel was not, at the time of sale, a paid-up participant in the Travel Consumer Restitution Fund, as required by subdivision (a).

(2) The seller of travel was not, at the time of sale, registered pursuant to Section 17550.20.

(3) The claimant was not located in California at the time of sale, as required by subdivision (a).

17550.38. Purpose of restitution corporation

(a) It is the purpose of the Travel Consumer Restitution Corporation to provide restitution to a person aggrieved, subject to the limitations set forth in this article. The restitution is secondary to any other source of compensation or reimbursement to which a person aggrieved may be entitled. Nothing herein shall be construed to require a person aggrieved to bring a civil action to obtain compensation or reimbursement in order to obtain payment from the restitution fund.

(b) The restitution shall be paid from the Travel Consumer Restitution Fund established by the Travel Consumer Restitution Corporation.

(c) The Travel Consumer Restitution Corporation may request legal counsel, representation, and advice from the office of the Attorney General.

17550.39. Nonprofit status of corporation; Liability of state for acts of officers or employees

(a) Participants shall maintain a corporation under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code) operating under the name "Travel Consumer Restitution Corporation."

(b) The State of California and any of its officers, agents, or employees shall not be liable in any manner for any act or omission of Travel Consumer Restitution Corporation, its directors, officers, agents, or employees.

17550.40. Compliance with provisions and rules

Each participant is required to comply with the provisions of this article and shall abide by the rules and decisions of the Travel Consumer Restitution Corporation adopted in accordance with this article.

17550.41. Composition of board

(a) The Board of Directors of the Travel Consumer Restitution Corporation shall be composed of six directors, as follows:

(1) One public consumer representative member appointed by the Director of Consumer Affairs.

(2) One employee of the Department of Justice, assigned by the office of the Attorney General, who shall serve as an ex officio, nonvoting member.

(3) Four directors who are participants in the Travel Consumer Restitution Fund.

(b) The director appointed pursuant to paragraph (1) of subdivision (a) shall serve until the appointment is revoked or another appointment is made, or until the director resigns.

(1) Participant directors shall be elected by a balloting of all participants in the Travel Consumer Restitution Fund in an election to be conducted by the Travel Consumer Restitution Corporation in February of each year. Participant directors shall be elected to serve two-year terms, with two of the four participant directors being elected each year to staggered two-year terms.

(2) The Travel Consumer Restitution Corporation shall adopt bylaw provisions setting forth procedures for the nomination, qualifications, and election of the four participant directors, consistent with this section.

(3) A director who does not qualify to be a participant or who otherwise becomes unable to serve shall not continue to serve as director. The board of the Travel Consumer Restitution Corporation shall adopt rules setting forth the procedures to determine that a director is no longer able to serve as a director and for the board to elect a successor to serve as director until the next election.

17550.42. Commencement of fiscal year

The fiscal year of the Travel Consumer Restitution Corporation shall commence on July 1 of each year.

17550.43. Establishment of funds; Initial assessment

(a) The Travel Consumer Restitution Corporation shall establish and maintain an operations fund for the payment of costs of operations and administration. The corporation shall prepare, prior to its fiscal year end, an estimated annual operational budget projecting the costs of operations and administration for the succeeding fiscal year, excluding the amount paid for claims.

(b) (1) All participants making their initial payment of assessments shall pay to the Travel Consumer Restitution Corporation an initial, one-time seventy-five dollar (\$75) assessment per location from which the participant does business in the state in order to provide additional funding for the operations of the corporation, as those operations are authorized by the corporation's board of directors.

(2) All participants making their initial payment of assessments shall pay to the Travel Consumer Restitution Corporation an initial, one-time two hundred dollar (\$200) assessment per location from which the participant does business in this state in order to provide additional funding for the restitution fund.

(c) All participants who were sellers of travel in any year, and who did not pay a Travel Consumer Restitution Corporation assessment in that year shall, when making a payment of assessment in a subsequent year, pay the Travel Consumer Restitution Corporation all assessments for the operations of the corporation and the restitution fund for the years in which they were in business as were billed and paid by participants in those years.

(d) The Travel Consumer Restitution Corporation shall establish a restitution fund for the payment of claims. All claims shall be paid from the restitution fund.

(1) The restitution fund shall be in the form of a trust account maintained in the State of California with a federally insured bank that shall be selected by the Board of Directors of the Travel Consumer Restitution Corporation and shall be approved by the office of the Attorney General. The Board of Directors of the Travel Consumer Restitution Corporation or its delegate shall serve as trustee.

(2) The restitution fund shall meet the following criteria:

(A) The trustee shall deposit all restitution funds received into the trust account.

(B) The trustee shall maintain a separate accounting for disbursements and collections on account of claims against each participant. Quarterly reports shall be provided to the office of the Attorney General, Consumer Law Section.

(C) The trustee shall disburse funds from the trust as directed by the Travel Consumer Restitution Corporation pursuant to Section 17550.47.

(D) The trustee may only invest the operations fund and trust funds in any of the securities described in subdivision (a) or (b) of Section 16430 of the Government Code.

17550.44. Annual assessment

(a) In addition to the assessments required by Section 17550.43, the Travel Consumer Restitution Corporation shall bill and collect from each participant an annual assessment that in the aggregate shall consist of assessments for the operations fund and the restitution fund. For each participant, the due date of that annual assessment shall be 30 days prior to the annual renewal date for registration pursuant to Section 17550.20 or 45 days after billing, whichever is later. For a participant registering for the first time, the assessments required by Section 17550.43 shall be due 10 days prior to the seller of travel doing business in this state. A late fee of five dollars (\$5) per day, up to a maximum of five hundred dollars (\$500), shall be paid for each day after the due date specified in this section until the assessment is paid.

(b) The annual assessment for the operations fund shall be determined no later than January 15 of each year for the next fiscal year in an amount that does not exceed the amount necessary to fund the operations and administration of the corporation, based upon the annual operational budget required by subdivision (a) of Section 17550.43, and shall become effective immediately. The annual assessment for the operations fund shall not exceed thirty-five dollars (\$35) per year for each location in the state from which a participant does business.

(c) If, as of January 15 of any year, the balance in the restitution fund is less than one million six hundred thousand dollars (\$1,600,000), the Travel Consumer Restitution Corporation shall make an assessment of participants, up to a maximum amount of two hundred dollars (\$200) for each location in the state from which a participant does business, to bring the restitution fund to an expected balance of one million six hundred thousand dollars (\$1,600,000). Every participant's assessment shall be determined prorata based upon the ratio of the number of locations in the state from which the participant does business to the total number of locations for all participants as of the preceding December 15.

(d) If, on May 1 or October 15 of any year, the balance in the restitution fund is less than nine hundred thousand dollars (\$900,000), the corporation shall make an emergency assessment of participants, not more than twice per year, up to a maximum amount of one hundred fifty dollars (\$150) per year for each location in the state from which the participant does business, for deposit in the trust account to return the level of the restitution fund to an expected balance of one million six hundred thousand dollars (\$1,600,000). The corporation shall estimate the total cost of billing, collecting, and processing the emergency restitution fund assessment and shall assess and collect, together with the emergency restitution fund assessment, an emergency operations fund assessment that is in the aggregate sufficient to offset the estimated cost. Each participant's assessments shall be determined pro rata based upon the ratio of the number of locations in the state from which the participant does business to the total number of locations for all participants as of the first day of the preceding month. The board of directors shall adopt rules for the notification of emergency assessments.

(e) In addition to the assessments required by Section 17550.43 and subdivision (d), if at any time during the fiscal year the board of directors of the Travel Consumer Restitution Corporation determines that the operations fund will be insufficient to pay the costs of

operations and administration for the current or next fiscal year, the corporation, as determined by the board of directors, shall do either or both of the following:

(A) make an emergency assessment of participants, not more than once per fiscal year, up to a maximum amount of sixty-five dollars (\$65) per year for each location in the state from which a participant does business. The emergency assessment may be billed and collected either on an emergency basis from all participants upon the making of the assessment, or in conjunction with each participant's annual assessment pursuant to subdivision (a) of Section 17550.44,

(B) transfer any or all interest earned on the Restitution Fund to the Operations Fund, provided that no transfer results in a restitution fund balance of less than one million two hundred thousand dollars (\$1,200,000).

(f) The assessment required by subdivision (d) or (e) shall be due 45 days from the date the bill for that assessment is mailed by the Travel Consumer Restitution Corporation. A late fee of five dollars (\$5) per day, up to a maximum of five hundred dollars (\$500), shall be paid for each day after the due date specified in this section until the assessment is paid.

(g) The Travel Consumer Restitution Fund shall report to the office of the Attorney General each levy of assessment within 10 business days after the levy.

17550.45. Failure to pay assessment

(a) If any assessment is not paid within 60 days of the due date, then the corporation shall notify the office of the Attorney General, which shall forthwith suspend the registration of the participant who has not paid. The corporation shall provide a copy of this notification to the participant.

(b) The Travel Consumer Restitution Corporation or any entity set forth in Section 17204 may bring an action at law or in equity against a participant to recover any unpaid assessment.

(c) The Travel Consumer Restitution Corporation shall be awarded costs and reasonable attorney's fees if it prevails in any action against a participant pursuant to subdivision (b). Those costs and attorney's fees shall be awarded as an item of costs, as provided for in paragraph (10) of subdivision (a) and paragraph (5) of subdivision (c) of Section 1033.5 of the Code of Civil Procedure.

17550.46. Approval of claim form

(a) The Attorney General or his or her delegate shall approve any claim form which shall be provided to a person aggrieved by the Travel Consumer Restitution Corporation to be submitted by a person aggrieved in order to obtain payment from the restitution fund. The claim form shall require the person aggrieved to provide the corporation with information which is sufficient to decide whether payment is to be made to that person. The information must include all of the following:

(1) The name, address, and telephone number of the person aggrieved.

(2) The date, form, and amount of each payment and evidence thereof.

(3) The amount of the claim and specific basis therefor.

(4) Any written agreements, correspondence, or other documentation relevant to the transaction and to the transportation or travel services which were purchased and not provided.

(5) Identification of the transportation or travel services which were purchased and not provided.

(6) Description of any payment or reimbursement or alternative transportation or travel services received by the person aggrieved for the transportation or purchased travel services which were not provided.

(b) If any required information is unavailable to the person aggrieved, the person shall so state in the claim form, explaining why the information is unavailable. The corporation may require any other additional information as may be necessary to decide the claim. Failure to provide any required information or documentation or an adequate explanation as to why the information is unavailable shall constitute grounds for denial of a claim.

(c) The person aggrieved who submits a claim form shall sign the form stating, under penalty of perjury pursuant to the laws of the State of California, that the information contained in the form and any statements by the person making the claim submitted therewith are true and correct.

17550.47. Filing of claim; Decision; Reconsideration; Appeal

(a) (1) Any person aggrieved who suffers a loss of more than fifty dollars

(\$50) of amounts paid for air or sea transportation or travel services may file a claim with the Travel Consumer Restitution Corporation by filing a claim form as required by Section 17550.46 and paying, by check or money order, a processing fee to the Travel Consumer Restitution Corporation in the amount of thirty-five dollars (\$35). Any check for the processing fee that is returned unpaid to the corporation by the financial institution upon which it is drawn shall be returned to the claimant and the claim shall be rejected for filing. Any claimant whose claim is rejected may resubmit his or her claim upon payment of a processing fee of fifty dollars (\$50).

(2) Any processing fee required by paragraph (1) shall be non-refundable except where

(A) a claim is denied on the basis as set forth in the statement of decision that either the seller of travel, at the time of sale, was not a participant in the Travel Consumer Restitution Fund or the seller of travel was not registered, or

(B) the claim is granted in whole or in part. In either case, the processing fee shall be refunded to the person aggrieved upon denial or upon payment of the claim, whichever is applicable.

(3) In no event shall a person aggrieved have more than six months after the scheduled date of completion of travel within which to file a claim with the Travel Consumer Restitution Fund.

(b) A person aggrieved may recover from the Travel Consumer Restitution Fund an amount not to exceed fifteen thousand dollars

(\$15,000) per person aggrieved, not to exceed the amount paid to the participant by or on behalf of the person aggrieved for the transportation or travel services. Payments from the restitution fund shall be limited to restitution for sums paid for transportation or travel services and shall not include any other amounts, including, but not limited to, payment for lost wages, pain and suffering, emotional distress, travel insurance, lost luggage, or any consequential damages. The person aggrieved shall not be entitled to receive attorney's fees in connection with a filed claim or on appeal.

(c) All claims are to be decided on the written record before the corporation, with no hearing to be held. The record shall consist of a fully executed and complete claim form, any other documentation submitted by the claimant or the participant, and any documents or reports submitted by staff or the designated representative of the office of the Attorney General. Claims are to be decided within 45 days of receipt unless

(1) the designated representative of the office of the Attorney General requests a continuance to obtain and submit information, or

(2) the Travel Consumer Restitution Corporation determines that additional information or documentation is required to decide the claim. In either case, the claim shall be decided within 45 days of receipt of all additional information or documentation. A claim not decided timely shall be deemed granted.

(d) Whenever the Travel Consumer Restitution Corporation denies a claim in whole or in part, it shall provide to the claimant a written statement of decision setting forth the factual and legal basis for the denial.

(e) A claimant may request reconsideration of an adverse decision of the Travel Consumer Restitution Corporation by mailing a written request, accompanied by a processing fee of fifty dollars (\$50) paid by check or money order, within 20 days of the date a notice of denial and statement of decision was mailed to the claimant. Any check for the processing fee that is returned unpaid to the Travel Consumer Restitution Corporation by the financial institution upon which it is drawn shall be returned to the claimant and the request for reconsideration shall not be determined until the claimant has paid the fifty dollars (\$50) processing fee.

(f) The Travel Consumer Restitution Corporation shall, within 60 days of receipt of the request, either decide the request or advise the claimant that additional information or documentation is needed, and if the decision is a denial in whole or in part, it shall provide to the claimant and seller of travel a written statement of decision setting forth the factual and legal basis for the decision. No appeal may be taken pursuant to subdivision (g) until reconsideration has been requested and decided. The claimant shall not be entitled to any attorney's fees incurred in connection with presentation of a claim or request for reconsideration.

(g) No decision of the Travel Consumer Restitution Corporation granting or denying a claim in whole or part shall be subject to review or appeal except as provided in this section. A claimant may seek review of the denial, in whole or part, of a claim by filing a notice of appeal after having served the notice by mail on the Travel Consumer Restitution Corporation. The notice of appeal shall be filed and served on the Travel Consumer Restitution Corporation not later than 30 days after a written statement of decision on a request for reconsideration has been mailed to the claimant. The notice of appeal from a decision of the Travel Consumer Restitution Corporation shall be filed with the clerk of the superior court either in the county in which the principal place of business of the Travel Consumer Restitution Corporation is located, or in the county in which the claimant was a resident at the time the claimant purchased the transportation or travel services in dispute.

(h) The claimant shall pay the same filing fee as is required for appeals from small claims court. The Travel Consumer Restitution Corporation shall file its response and the record of the claim before the corporation with the clerk of the superior court within 30 days of the day the notice of appeal was served on the Travel Consumer Restitution Corporation.

(i) Upon the filing of the record the clerk of the court shall schedule a hearing for the earliest available time and shall mail written notice of the hearing at least 14 days prior to the time set for the hearing.

(j) The hearing on appeal shall be limited to the record before the Travel Consumer Restitution Corporation and any relevant evidence that could not have been with reasonable diligence submitted previously to the corporation. The reviewing court shall apply a preponderance of the evidence standard of review. The pretrial discovery procedures described in subdivision (a) of Section 2019 of the Code of Civil Procedure are not permitted, there is no right to trial by jury, and the decision of the superior court shall be appealable by either party. No money may be claimed from or paid by the Travel Consumer Restitution Fund except in accordance with the provisions and procedures set forth in this article. No provision herein shall limit or otherwise affect those remedies as may be available against persons or entities other than the Travel Consumer Restitution Corporation.

(k) If the claimant prevails in whole or in part on an appeal, the claimant shall not be entitled to an award in excess of the amount of the original claim.

(l) Any claim awarded by the corporation shall be paid promptly by the trustee of the restitution fund when the time for appeal has passed. Any judgment on appeal shall be paid promptly by the trustee of the restitution fund whenever the judgment becomes final. If there should be insufficient funds to pay a claim when otherwise due, claims shall be paid in the order received. If the Travel Consumer Restitution Corporation ceases to operate pursuant to the terms of Section 17550.52, any remaining trust funds shall be allocated on a pro rata basis to claims accruing prior to the corporation ceasing to operate, after payment of outstanding debts and liabilities as provided in Section 17550.57.

(m) A claim shall require a majority of at least three affirmative votes for denial, otherwise it shall be deemed granted.

17550.48. Assignment of right of recovery

Any person aggrieved who recovers from the fund shall assign to the Travel Consumer Restitution Corporation all rights of recovery, to a maximum of the amount received from the Travel Consumer Restitution Fund, against any person or organization from which the person aggrieved received any payment as compensation for any loss for which restitution was paid from the Travel Consumer Restitution Fund. The person aggrieved shall execute and deliver to the corporation instruments and papers and perform

any other acts necessary to carry out this section. The corporation shall have the authority and discretion to determine whether or not to seek recovery.

17550.49. Revocation of registration

If the Travel Consumer Restitution Corporation directs that payment be made from the restitution fund in any amount in response to a claim against a participant, the corporation shall inform the office of the Attorney General and shall maintain a record of all claims paid from the fund. A list of those sellers of travel on whose account payment has been made from the fund shall be provided upon written request. The corporation shall have the authority and discretion to determine whether or not to seek recovery from a seller of travel of any amounts paid from the fund. The corporation may seek that recovery by any lawful means, including, but not limited to, debt collection or civil litigation. If the corporation seeks recovery, it shall be entitled to collect from any seller of travel against which action is taken all reasonable expenses incurred in taking the action, including attorney's fees. The corporation shall also be entitled to interest at the rate of 9 percent per year on the amount paid from the fund, together with all expenses and costs incurred by the corporation in connection with the claim.

17550.50. Immunity of officers and employees

There shall be no personal liability on the part of and no cause of action of any nature shall arise against the Travel Consumer Restitution Corporation or the directors, officers, employees, or agents of the Travel Consumer Restitution Corporation on any decision to deny a claim for payment from the restitution fund.

17550.51. Corporation not liable for damages

The Travel Consumer Restitution Corporation shall not be liable for any consequential damages, or for any punitive damages, in connection with the performance of its restitution function.

17550.52. Failure or cessation of corporation

The Attorney General or his or her delegate may determine that the Travel Consumer Restitution Corporation has failed or ceased to operate upon a finding that any one of the following has occurred with respect to the corporation:

- (a) Was not created.
- (b) Has been dissolved.
- (c) Has ceased to operate.
- (d) Is insolvent or bankrupt.
- (e) Has failed to pay its operating costs.
- (f) Has failed to pay any claim or judgment in a timely manner.
- (g) Has violated its articles of incorporation or any law of this state.
- (h) Has invested its funds in violation of this article.
- (i) Has not levied assessments as required by this article.
- (j) Has not diligently decided upon a claim made by a person aggrieved.
- (k) Has violated any section of this article.
- (l) Has neglected or refused to submit its books, papers, and affairs to the inspection of the office of the Attorney General.

17550.53. Authority to investigate claims; Examination of books and records

(a) The Travel Consumer Restitution Corporation shall have independent authority to investigate claims filed by persons aggrieved pursuant to Section 17550.47.

(b) The corporation, upon the request of the office of the Attorney General, may participate in an examination or investigation of the books and records of a participant for the purpose of evaluating a claim related to that seller of travel. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the State of California or any of its employees, agents, or representatives for the release of any information furnished to the Travel Consumer Restitution Corporation pursuant to this subdivision or in connection with the investigation or review of any claim.

(c) With the consent of a majority of its directors, the corporation, in order to fulfill its obligations under this article, may appoint an independent certified public accountant or public accountant or hire or appoint a specialized committee or employees to conduct an examination or investigation authorized by this section. Any reports as a result thereof shall be furnished to the office of the Attorney General.

(d) To assist the corporation in evaluating a claim related to a participant, the participant shall provide or make available for inspection by the corporation those books, accounts, bank account records, and files which are necessary for the corporation to evaluate the claim.

(e) The corporation, any participant, an agent of the corporation or any person other than a law enforcement agency who uses information obtained under this section for any purpose not authorized in this article or Article 2.6 (commencing with Section 17550) is guilty of a misdemeanor.

(f) Costs and expenses for any examination under this section shall be paid for by the participant if a claim directly related to that seller of travel has been approved and payment has been made to a person aggrieved. The corporation may maintain an action for recovery of these examination costs and expenses in any court of competent jurisdiction, and shall recover its reasonable costs and attorney's fees as an item of costs, as provided for in paragraph (10) of subdivision (a) and paragraph (5) of subdivision (c) of Section

17550.54. Approval of articles of incorporation, bylaws or amendments

(a) The Secretary of State shall not file articles for the incorporation of the Travel Consumer Restitution Corporation or an amendment to the articles unless the office of the Attorney General has issued written approval of the articles or amendment.

(b) The Travel Consumer Restitution Corporation shall not adopt any bylaws or amendments thereto without the written consent of the office of the Attorney General. If the office of the Attorney General does not approve or disapprove any bylaws or amendments within 60 days of receipt, such bylaws or amendments shall be deemed to be approved.

17550.55. Inapplicability of Insurance Code

No provision of the Insurance Code shall apply to the Travel Consumer Restitution Corporation.

17550.56. Examination and review by Attorney General

The operation of the Travel Consumer Restitution Corporation shall at all times be subject to the examination and review of the office of the Attorney General and its duly designated representatives. The office of the Attorney General and its duly designated representatives may at any time investigate the affairs and examine the books, accounts, record, and files used by the corporation. The office of the Attorney General and its duly designated representatives shall have free access to the offices, books, accounts, papers, records, files, safes, and vaults of the corporation.

17550.57. Dissolution of corporation

If the Travel Consumer Restitution Corporation is dissolved or ceases to exist, or if the Attorney General or his or her delegate makes a determination pursuant to Section 17550.52 that the corporation has failed or ceased to operate, all outstanding debts, obligations of the corporation, and amounts due for services rendered shall first be paid from the remaining assets, including the restitution fund. The assets remaining after settling all those liabilities shall be distributed to the participants, less the costs of that distribution. The distribution to participants shall be prorata based upon the ratio of the number of locations in the state from which the participant does business to the total number of locations for all registered participants at the time the corporation is dissolved or ceases to exist.

17550.58. Administrative costs and expenses

All costs and expenses incurred by the Department of Justice in the administration of this article, including those incurred pursuant to Section 17550.38, shall be paid to the department by the Travel Consumer Restitution Corporation. The department may institute an action for the recovery of costs and expenses incurred in the administration of this article in any court of competent jurisdiction.

17550.59. Repeal of article

This article shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2006, deletes or extends that date.